IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12-7-2006

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Writ Petition No.4874 of 1998

Sri Narendra Raja Textiles Ltd.
P.Vadugapalayam
Palladam – 638 664
Coimbatore District. ... Petitioner

Vs.

1. S.Aruchamy

2. The Presiding Officer,
Labour Court,
Coimbatore. ... Respondents

This writ petition has been filed under Article 226 of Constitution of India, praying this Court to issue a writ of Certiorari, to call for the records pertaining to the award passed by the second respondent in I.D.No.132 of 1996 dated 27.1.98 and quash the same insofar as interference made by the second respondent with the punishment of dismissal of the first respondent.

For Petitioner : Mr.Sanjay Mohan,
Senior Counsel for
M/s.Ramasubramaniam &
Associates

For 1st Respondent : Ms.V.Vaijayanthimala
for Mr.K.V.Shanmuganathan

2nd Respondent : Court

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O R D E R

Petitioner seeks to quash the award dated 27.1.1998 in I.D.No.132 of 1996, passed by the Labour Court, Coimbatore, the second respondent herein.

2. The first respondent was appointed as Workman in the Spinning Department of the petitioner Textiles Limited and for the misconduct committed by him, the management issued three charge memos on

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25.10.1994, 15.11.1994 and 2.5.1995 to the effect that the first respondent was negligent in carrying out the work; misbehaviour with the superiors; trespass and unauthorised search of records in the Supervisor's room. The last two charge memos were issued while the enquiry in respect of the first charge was pending. An enquiry was conducted in respect of all the three charge memos and in the enquiry it was found that all the three charges are proved and consequently the first respondent was dismissed by the management on 1.1.1996. The said dismissal order was challenged in I.D.No.132 of 1996 and the Labour Court agreed with the management that all the charges were established and also found that the first respondent was extremely negligent in carrying out his work, he trespassed unauthorisedly into the Supervisor's room and had been perusing files and registers without permission and the first respondent was running 40 spindles empty and when questioned, he had abused the Supervisor indecently. However, the Labour Court interfered with the punishment under Section 11-A of the I.D. Act by stating that the delinquency are only minor misconducts and even though the same are proved, dismissal is not warranted and the punishment imposed is highly excessive and disproportionate. The grievance of the petitioner Management is without even issuing lesser punishment, the second respondent directed the petitioner to reinstate the first respondent with continuity of service and with payment of 50% of backwages. The said award is challenged in this writ petition.

3. The learned counsel for the petitioner/Management submits that the charges are very serious in nature and the same are clearly proved before the Enquiry Officer and taking note of seven misconducts committed by the first respondent on earlier occasions, the first respondent was dismissed from service. The learned counsel further argued that the Labour Court itself held that if the misconduct of this type is encouraged, it will lead to indiscipline among the workers against the Industrial peace and further held that no prudent management is expected to ignore and bear with such type of misconducts. In paragraph 11 of the award, the learned Judge observed as follows,

> "... it is not out of place to mention that these types of misconduct should not be allowed to continue in industry which would be a hindrance to progress in industrial peace and affect the discipline among the workers."

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The learned counsel therefore submitted that having recorded the finding that the charges against the first respondent being serious misconduct, the learned Judge is not right in interfering with the punishment imposed in exercise of his powers conferred under Section 11-A of the Industrial Disputes Act, which is perverse and the same is liable to be set aside.

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4. Heard the learned counsel for the first respondent, who has contended that the punishment having been found excessive by the Labour Court, discretion was correctly exercised under section 11-A of the Industrial Disputes Act by the second respondent and awarded reinstatement with 50% backwages and the same cannot be interfered with in the light of the misconducts, which are minor in nature.

5. I have considered the rival submissions made by the learned counsel for the petitioner as well as the learned first respondent.

6. A perusal of the Labour Court award discloses that in respect of the first charge, the testimonies of MW-1 to MW-3 are natural and convincing. No motive was proved against the management witnesses. Hence the Enquiry Report Ex.M-11 could not be termed as perverse, which is perfect in all respects. Therefore the findings given in Ex.M-11 with regard to Charge No.1 is approved.

7. In respect of charge NO.2, the learned Judge gave a finding that the Enquiry Officer analysed the evidence and arrived at the factual conclusion. The Enquiry Report Ex.M-12 deserves approval and the charge of misconduct in this respect also stands approved.

8. Similarly, with regard to charge No.3, the learned Judge approved the findings of the Enquiry Oficer and held that if the misconduct of this type is encouraged, it will lead to indiscipline among the workers against the Industrial peace. As rightly contended by the learned counsel for the petitioner, there is a finding given by the second respondent in paragraph 10 that no prudent management could be expected to ignore and bear such type of misconducts. The learned Judge also states that under Ex.M-28 it is disclosed that on seven previous occasions the first respondent was imposed with certain punishments such as warning, suspension, etc. The learned Judge after giving such a finding held that even though the charges are proved, they are only minor misconducts and therefore the punishment of dismissal imposed against the first respondent is disproportionate.

9. Now, the point for consideration is whether the findings given by the second respondent holding that even though the charges are proved and the same are only minor misconducts, the punishment of dismissal is disproportionate or not.

10. (a) In the decision reported in (2005) 2 SCC 489 (Bharat Forege Co. Ltd. v. Uttam Manohar Nakate) the Honourable Supreme Court in paragraphs 30 to 32 held thus,

> "30. Furthermore, it is trite, the Labour Court or the Industrial Tribunal, as the case may be, in terms of the provisions of the Act, must act within the four corners thereof. The Industrial

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Courts would not sit in appeal over the decision of the employer unless there exists a statutory provision in this behalf. Although its jurisdiction is wide but the same must be applied in terms of the provisions of the statute and no other.

31. If the punishment is harsh, albeit a lesser punishment may be imposed, but such an order cannot be passed on an irrational or extraneous factor and certainly not on a compassionate ground.

32. In Regional Manager, Rajasthan SRTC v. Sohan Lal ((2004) 8 SCC 218), it has been held that it is not the normal jurisdiction of the superior courts to interfere with the quantum of sentence unless it is wholly disproportionate to the misconduct proved. Such is not the case herein. In the facts and circumstances of the case and having regard to the past conduct of the respondent as also his conduct during the domestic enquiry proceedings, we cannot say that the quantum of punishment imposed upon the respondent was wholly disproportionate to his act of misconduct or otherwise arbitrary."

(b) The Honourable Supreme Court in the decision reported in (2005) 7 SCC 338 (V.Ramana v. A.P.SRTC) in paragraphs 11 and 12 held as follows,

"11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury case ((1948) 1 KB 223)* the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

12. To put it differently unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the

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punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed."

(c) The Honourable supreme Court in the decision reported in (2006) 1 SCC 430 (Hombe Gowda Educational Trust v. State of Karnataka) in paragraphs 17 and 18 held as follows,

"17. The Tribunal's jurisdiction is akin to one under Section 11-A of the Industrial Disputes Act. While exercising such discretionary jurisdiction, no doubt it is open to the Tribunal to substitute one punishment by another, but it is also trite that the Tribunal exercises a limited jurisdiction in this behalf. This jurisdiction to interfere with the quantum of punishment could be exercised only when, inter alia, it is found to be grossly disproportionate.

18. This Court repeatedly has laid down the law that such interference at the hands of the Tribunal should be inter alia on arriving at a finding that no reasonable person could inflict such punishment. The Tribunal may furthermore exercise its jurisdiction when relevant facts are not taken into consideration by the management which would have direct bearing on the question of quantum of punishment."

Ultimately, the Honourable Supreme Court following the earlier decisions set aside the award of the Labour Court and upheld the order of dismissal.

(d) In the very recent decision reported in AIR 2006 SC 1480 (Maharashtra State Seeds Corporation Ltd. v. Haridas & Another) the Honourable Supreme Court explained the power of the High Courts in interfering with the punishment imposed. In paragraphs 20 and 21 it is held thus,

"20. ... It is now well settled that in a matter of disciplinary proceedings the High Court exercises a limited power. (See Govt. of A.P. & Ors. v. Mohad. Nasrullah Khan (JT 2006 (2) SC 82), L.K.Verma v. H.M.T. Ltd. & Anr. (JT 2006 (2) SC 99), Karnataka Bank Ltd. v. A.L.Mohan Rao ((2006) 1 SCC 63) and Hombe Gowda Educatinal Trust & Anr. v. State of Karnataka & Ors. ((2006) 1 SCC 430).

21. The grounds for judicial review are

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limited. In Damoh Panna Sagar Rural Regional Bank & Anr. v. Munna Lal Jain ((2005) 10 SCC 84) this Court held that when the High Court intends to interfere with the quantum of punishment on the ground that the same is shockingly disproportionate, it must record reasons for coming to such a conclusion."

(e) In the decision reported in 1991 (1) LLJ 372 (Engine Valves Ltd v. Labour Court, Madras & Another) a Division Bench of this Court in paragraph 18 held as under,

"The decision of this Court in *Madras Fertilisers* case (supra) relied upon by the learned counsel for the respondents only lays down that where the Labour Court has not made a proper exercise of the discretion vested in it under Section 11A of the Act, this court in the exercise of its powers under Article 226 of the Constitution of India can certainly do what the Labour Court failed to do. Having regard to the principles referred to above, we are of the view that the power and discretion conferred under Section 11A of the Act have to be exercised judicially and judiciously and that there should be sufficient indication in the order itself of the fact that the Court exercising powers under Section 11A of the Act was aware of and alive to the norms and requirements of Section 11 A of the Act. The Court exercising powers under Section 11A of the Act after finding the misconduct to have been proved is first obliged to advert itself to the question of necessity or desirability to interfere with the punishment imposed by the management and, if the management could not justify the punishment imposed thereafter it must consider the question as to the relief that is to be granted to the employee. In so considering the relief to be granted, the Court has an obligation to consider whether the punishment imposed is disproportionate or shockingly severe to the charges held proved and if so whether a reinstatement has to be ordered or whether any other lesser punishment has to be imposed. A specific finding must be recorded whether it was expedient and proper to reinstate the employee or whether award of compensation in lieu of reinstatement will meet the requirements and ends of justice of the case concerned. Absence of reasons to invoke the power and interfere under

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> provisions of Section 11A in a particular case would render the very exercise of powers arbitrary and perverse and the order consequently would stand vitiated."

Ultimately the Division Bench remitted the matter to the Labour Court for passing fresh orders in accordance with section 11-A of the Act.

(f) In 1994 (2) LLJ 888 (Kerala Solvent Ex. Ltd. v. A.Unnikrishnan & Another), the Honourable Supreme Court in paragraph 7 held as follows,

> "... In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability."

11. Applying the above principles laid down by the Honourable Supreme Court as well as this Court, the action of the Labour Court, the second respondent herein, in interfering with the punishment imposed on the first respondent and ordering reinstatement with 50% backwages cannot be justified, particularly when the punishment imposed by the petitioner Management is not shockingly disproportionate. The charges having been proved in the enquiry and the same having been approved by the second respondent in its findings, the Labour Court ought not to have interfered with the punishment without considering the gravity of the charges levelled against the petitioner. The reasoning given by the Labour Court to interfere with the punishment is that the delinquencies committed by the first respondent are minor misconducts. The charges being serious and the same having been found proved beyond any doubt, the same cannot be treated as minor misconducts. In my view, the second charge, namely, trespass and unauthorised search of records in the Supervisor's room cannot at all

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be treated as minor misconducts. The first respondent by indulging in the said act, lost the confidence of management to continue in service. Hence the impugned award is liable to be set aside.

12. During pendency of the writ petition, this Court granted an interim direction to the petitioner Management to deposit Rs.2.00 lakhs to the credit of I.D.No.132 of 1996 and on such deposit, the first respondent was permitted to withdraw Rs.50,000/-. The first respondent was also directed to be paid 17(b) wages. The amount of Rs.50,000/- withdrawn by the first respondent and the 17(b) wages paid to him till date shall not be recovered from him. The balance amount of Rs.1.50 lakhs deposited in the Nationalised Bank is directed to be returned to the petitioner Management.

13. In the result, the impugned award of the Labour Court in I.D.No.132 of 1996 dated 27.1.1998 is set aside and the writ petition is allowed with the above directions. No costs. Connected miscellaneous petitions are closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

vr

To

The Presiding Officer, Labour Court, Coimbatore.

+1cc to Mr.K.V.Shanmuganathan, Advocate SR 30631

+1cc to M/s. S.Ramasubramaniam & Associates, Sr 30746

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km/19.7.

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